

ORIG-1-NPL

Albert L. Brinkman #133444

Name and Prisoner/Booking Number

ASP-Tucson, Manzanita

Place of Confinement

P.O. Box 24401

Mailing Address

Tucson, Az. 85734 - 4401

City, State, Zip Code

FILED	RECEIVED	LODGED COPY
5 SEP - 9 2009		5
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA		
BY DEPUTY		

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

)  
ALBERT L. BRINKMAN, )  
 (Full Name of Plaintiff) Plaintiff, )  
 )  
 vs. ) CASE NO. CV08-670-TUC-FRZ  
 ) (To be supplied by the Clerk)  
 )  
(1) DORA B. SCHIRO, et al., )  
 (Full Name of Defendant) )  
 )  
(2), )  
 )  
(3), )  
 )  
(4), )  
 Defendant(s). )  
 Check if there are additional Defendants and attach page 1-A listing them. )

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

Original Complaint  
 First Amended Complaint  
 Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:

28 U.S.C. § 1343(a); 42 U.S.C. § 1983  
 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).  
 Other: \_\_\_\_\_

2. Institution/city where violation occurred: ARIZONA Dept. of Corrections - Tucson and Phoenix  
Prisons.

**B. DEFENDANTS**

1. Name of first Defendant: Dora B. Schriro. The first Defendant is employed as:  
Former Director of A.D.O.C. at A.D.O.C. Central Office, Phx.  
(Position and Title) (Institution)
2. Name of second Defendant: Charles Ryan. The second Defendant is employed as:  
Acting Director of A.D.O.C. at A.D.O.C. Central Office, Phx.  
(Position and Title) (Institution)
3. Name of third Defendant: Ivan Bartos. The third Defendant is employed as:  
Former Complex Warden - Lewis at A.S.P.C. - Lewis Complex  
(Position and Title) (Institution)
4. Name of fourth Defendant: Greg Fizer. The fourth Defendant is employed as:  
Warden - Tucson Complex at A.S.P.C. - Tucson  
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

**C. PREVIOUS LAWSUITS**

1. Have you filed any other lawsuits while you were a prisoner?  Yes  No

2. If yes, how many lawsuits have you filed? 1. Describe the previous lawsuits:

a. First prior lawsuit:

1. Parties: Albert L. Brinkman v. Dora B. Schriro et al.
2. Court and case number: CV06-512-TUC-CJT
3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) Pending

---

b. Second prior lawsuit:

1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
2. Court and case number: \_\_\_\_\_
3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

---

c. Third prior lawsuit:

1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
2. Court and case number: \_\_\_\_\_
3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

---

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

5. Name of fifth Defendant: Mr. Ramos. The fifth Defendant is employed as: Former Deputy Warden-Rast Unit at A.S.P.C. - Lewis
6. Name of Sixth Defendant: John Palosaari. The sixth Defendant is employed as: Warden at the Lewis Complex at A.S.P.C. - Lewis
7. Name of Seventh Defendant: Laura Schweitzer. The seventh Defendant is employed as: Former Deputy Warden-Santa Rita Unit at Tucson Complex.
8. Name of eighth Defendant: Cheryl Dossett. The eighth Defendant is employed as: Appeals officer at A.D.O.C. - Central Office
9. Name of ninth Defendant: Aurora Aguilera. The ninth Defendant is employed as: Hearing Officer at A.D.O.C. - Central Office
10. Name of Tenth Defendant: CO III Meyia. The Tenth Defendant is employed as: Corrections Officer IV at A.S.P.C. - Lewis/Rast
11. Name of eleventh Defendant: Mike Linderman. The eleventh Defendant is employed as: Pastoral Services Administrator at A.D.O.C. - Central Office
12. Name of Twelfth Defendant: Jennifer Lyons. The Twelfth Defendant is employed as: A.D.O.C. Publications Review Officer at A.D.O.C. - Central Office
13. Name of thirteenth Defendant: Gordon Vernon. The thirteenth Defendant is employed as: Former senior Chaplain at A.S.P.C. - ~~Tucson~~ Tucson Complex
14. Name of fourteenth Defendant: Mr. Kingsland. The fourteenth Defendant is employed as: Senior Chaplain at A.S.P.C. - Lewis Complex
15. Name of fifteenth Defendant: Phil Irby. The fifteenth Defendant is employed as: Senior Chaplain at A.S.P.C. - Tucson Complex
16. Name of sixteenth Defendant: Mark Winslow. The sixteenth Defendant is employed as: Unit Chaplain at A.S.P.C. - Tucson/Manzanita.
17. Name of Seventeenth Defendant: Rodney Daughtry. The seventeenth Defendant is employed as: former CO III ~~CO III~~ at A.S.P.C. - Lewis/Rast  
-Grievance Coordinator

18 Name of eighteenth Defendant: Sh. Kokemore. The eighteenth Defendant is employed as: CO III /Grievance Coordinator at Tucson - Santa Rita.

19 Name of nineteenth Defendant: Ms. Dean. The nineteenth Defendant is employed as: Corrections Officer III at Tucson / Santa Rita.

20 Name of twentyeth Defendant: James Beverly. The twentyeth Defendant is employed as: Corrections Officer III at Tucson / Santa R.t.

21 Name of twenty-first Defendant: D. Rhoads. The twenty-first Defendant is employed as: Corrections Officer III at Tucson / Santa Rita.

22 Name of twenty-second Defendant: Wanda Hofmann. The twenty-second Defendant is employed as: Assistant Attorney General at Attorney Generals Office / Tucson.

23 Name of twenty-third Defendant: D. Han. The twenty third Defendant is employed as: Corrections Officer IV at Tucson / Santa Rita.

24 Name of twenty-fourth Defendant: Cindy K. Jorgenson. The twenty fourth Defendant is employed as: U.S. District Court Judge at Arizona / Tucson Division.

25 Name of twenty-fifth Defendant: James Board. The twenty-fifth Defendant is employed as: Health Services Director at Central Office

26 Name of twenty-sixth Defendant: Dennis Kendall. The twenty-sixth Defendant is employed as: Health Services Director at Central Office

27 Name of twenty-seventh Defendant: Richard Pratt. The twenty-seventh Defendant is employed as: Facility Health Administrator at Lewis Complex

28 Name of twenty-eighth Defendant: Dennis Chenail. The twenty-eighth Defendant is employed as: Facility Health Administrator at Tucson Complex

29 Name of twenty-ninth Defendant: R.D. White. The twenty-ninth Defendant is employed as: Medical Doctor at Tucson Complex

30 Name of thirtieth Defendant: Ronolfo Macabuhay. The thirtieth Defendant is employed as: Medical Doctor at Lewis Complex

31 Name of thirty-first Defendant: Vinluan. The thirty-first Defendant is employed as: Medical Doctor at Lewis Complex

32 Name of thirty-second Defendant : Joseph Whaley . The thirty-second Defendant is employed as : Medical Doctor at Tucson Complex

33 Name of thirty-third Defendant : Michael . The thirty-third Defendant is employed as : Corrections Officer II at Tucson - Santa Rita

34 Name of thirty-fourth Defendant : James Baldwin . The thirty-fourth Defendant is employed as : Unit Chaplain at Lewis Complex

35 Name of thirty-fifth Defendant : Raymond Helms . The thirty-fifth Defendant is employed as : Unit Chaplain at Tucson - Santa Rita

36 Name of thirty-sixth Defendant : Gerald Thompson . The thirty-sixth Defendant is employed as : Former Deputy Warden at Lewis - Rast

37 Name of the thirty-seventh Defendant : E. Cruz . The thirty-seventh Defendant is employed as : Corrections Officer II at Lewis - Rast

38 Name of the thirty-eighth Defendant : Brandon . The thirty-eighth Defendant is employed as : Corrections Officer II at Lewis - Rast

39 Name of thirty-ninth Defendant : Kevin Lewis . The thirty-ninth Defendant is employed as : Medical Doctor at Tucson Complex

40 Name of fortieth Defendant : Lebo . The fortieth Defendant is employed as :

## D. CAUSE OF ACTION

### COUNT I

1. State the constitutional or other federal civil right that was violated: Access to the Courts and seek redress for Constitutional Torts.
2. Count I. Identify the issue involved. Check **only one**. State additional issues in separate counts.
 

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input checked="" type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	
3. Supporting Facts. State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.
 

(1) Defendants Daughtry, Mejia, Ramos, Bartos, Dossett, Schriro, and Pratt all failed to resolve issues during the grievance process that Plaintiff filed from July 2005 through November 2005 while plaintiff was housed at Lewis Complex - East Unit. (2) The actions /inactions of Defendants resulted in Court dismissal of Constitutional Claims depriving plaintiff of his right of Court access. (3) From July through November 2005, Defendant acted outside of his job's parameters and Arizona Dept. of Correction (A.D.O.C.) policies, rules and regulations which allowed other A.D.O.C. officials to take property and money from plaintiff as well as allow plaintiff to be denied medical and dental care for very painful problems and retaliation by staff for exercising Constitutionally protected rights. He also refused to investigate and/or respond in grievance process as well as disposed of grievance documents. (4) Defendant Daughtry submitted sworn testimony which he knew to be false which resulted in a dismissal of a Court action. (5) Defendants Schriro, Bartos, Ramos, Mejia, Dossett, after being notified of misconduct by subordinates continued to allow Subordinates behavior through lack of supervision, proper training or disciplinary action for their wrongs against plaintiff, all which aided in plaintiff's action in court being dismissed. (6) Defendants Schriro, Bartos, Ramos, Mejia, Dossett acted in collusion and conspired with Defendant Daughtry to cover-up civil rights violations as well as authorized/ordered subordinates to create and submit false-perjured documents to the Court against all State, Federal and local laws, rules. (Continued) on page 3-b)
4. Injury. State how you were injured by the actions or inactions of the Defendant(s).
 

Defendants tortious acts and omissions directly caused and resulted in dismissals of valid constitutional claims and violations of his rights to access and seek redress in the courts; unnecessary delay and monetary expenses; entitling plaintiff to damages.
5. Administrative Remedies:
  - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
  - b. Did you submit a request for administrative relief on Count I?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
  - c. Did you appeal your request for relief on Count I to the highest level?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
  - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

7. After plaintiff's transfer from Lewis-Rast to Tucson-Santa Rita, Defendant Kokemor, after contacting defendant Daughtry, decided to engage in the same conspiratorial conduct and deny exhaustion remedies to plaintiff in final stage of grievance system (Appeal) (8) Defendant Kokemor eventually was removed from his position as grievance coordinator due to his misconduct and ineptitude while serving that post. (9) Defendant Kokemor continued these practices with any/all documents filed by plaintiff be they for Dental care, medical care and civil rights complaints.

(10) Defendants Beverly, Dean, Rhoads, Han, Schweitzer and Fizer all violated plaintiff's rights by failing to process inmate letters, informal resolutions and all stages of grievances which denied plaintiff exhaustion of remedies and denial of Court Access. (11) Defendants Schriro, Dossell, and Aguilar all failed to act on grievances and complaints sent to by plaintiff detailing the many abuses and Constitutional violation being perpetrated against plaintiff by defendants subordinate, for which defendants took no action. (12) After the filing of suit #1983 was filed in Federal Court above named defendants, with the help of their attorney - Assistant Attorney General Hoffmann, submitted many false statements to the Court for the purpose of getting the Court to dismiss plaintiff's action. (13) Defendant Jorgenson purposely ignored plaintiff's evidence and acted with defendants in her rulings even though real evidence showed the contrary, which aided in defendants desire to gain a dismissal.

**COUNT II**

1. State the constitutional or other federal civil right that was violated: Delay and Denial of Medical Care causing injuries and pain

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input checked="" type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

(1) Plaintiff entered the Arizona Dept. of Corrections in 1999 with a number of chronic health conditions such as but not limited to: hypertension-high blood pressure; High Cholesterol; arrhythmia-erratic heart beat; arteriosclerosis-blockage of blood vessels; stomach, bowel, colon and rectal problems; Foot bone and toe deformity. (2) Upon arrival at Lewis Complex, prison officials issued plaintiff boot that were too small exacerbating plaintiff's foot problems. (3) Plaintiff sought medical treatment from Defendants Pratt, Vinluan and Macabuhay for his various medical problems and dental work, as well as proper fitting shoes, back brace, tests and medications but Defendants chose to deny adequate treatment which exacerbated existing injuries while allowing new conditions to develop and worsen, all under the watch and knowledge of Defendants Pratt, Macabuhay, Vinluan, Schriro, Kendall and Baird. (4) After long delays, serious and painful medical conditions have now been detected such as but not limited to: Diverticulitus in intestinal tract, numerous polyps in colon, hemorrhoids, heart-vascular blockage, <sup>aneurysm</sup>, ulcer bleeding in stomach, back-spinal deformities in addition to the already known and painful problems. (5) For plaintiff's entire stay at Lewis Complex from 1999 through 2005, and again in 2008 plaintiff was forced to wear shoes too small for defendants never provided adequate sized shoe wear. (6) The inadequate size in shoe wear has resulted a host of new pains in walking, standing, hip, knee, back, neck and other joint/skeletal pains. (7) Plaintiff was transferred to Tucson Complex in 2005 where he has resided since with the exception of a brief return to the Lewis Complex in 2008. (8) While in Tucson Complex, Plaintiff medical treatment for his (Continued) on page 4-b)

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

---



---

5. **Administrative Remedies.**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- Did you submit a request for administrative relief on Count II?  Yes  No
- Did you appeal your request for relief on Count II to the highest level?  Yes  No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

---

numerous medical problems from Defendants Chenail, White, Whaley and Lewis.

(9) At one point while housed at the Santa Rita Unit of Tucson Complex were forced to go bare foot for an entire month due to the inadequate size of shoe issued him. (10) Defendants Chenail, White, Whaley denied plaintiff proper fitting shoes for two full years while having knowledge of plaintiffs foot and back problems and the pain and injury being inflicted. (11) Defendants Pratt, Macabuhay, Vinluan, Chenail, White, Whaley, Lewis, have inadequately treated plaintiffs serious medical problems and dental problems, allowed critical medications to expire for long periods before re-issuing, have cancelled critical medications and have refused needed medical supplies and/or accommodations for plaintiffs medical problems. (12) Defendants Schriro, Ryan, Baird, Kendall have personal knowledge of plaintiffs medical problems and have refused to take corrective action to date. (13) Plaintiff broke his arm on March 31, 2008 as a direct result of not having the long promised non-slip shower shoes promised him by Defendants Pratt, Chenail, Schriro, Ryan, Baird, Kendall, Macabuhay, Vinluan, White, Whaley and Lewis. (14) Defendants Pratt, and Macabuhay refused adequate treatment (no cast or sling, no pain medication or follow up therapy) which resulted in pain, weakness, loss of movement and disability. (15) These actions/inactions were performed by all defendants with Deliberate Indifference towards plaintiffs many serious medical needs in direct violation of the 8<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution.

**COUNT III**

1. State the constitutional or other federal civil right that was violated: Freedom to Exercise Religion - 1<sup>st</sup>, 8<sup>th</sup>, 14<sup>th</sup> Amendments to U.S. Constitution, A.R.S. 41-1493, Interstate Compact A.R.S. 31-471, thru 13-492 and Federal law (R.L.U.I.P.A.)

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input checked="" type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

(1) Plaintiff is a practitioner of the religious faith of Wicca, also known as witchcraft, The Craft, and the old religion (Pre-Christian, Pagan) a Constitutionally recognised religion. (2) Plaintiff's beliefs are sincere and bound by settled tenets and ceremonial systems of Wicca and plaintiff has always attempted to practice his faith that does not pose safety or security concerns to the prison. (3) Plaintiff has practiced his Wiccan beliefs in A.D.O.C. officially since 2005 but was a practitioner long before. Since 2005 Defendants Schriro, Ryan, Linderman, Helms, Gordon, Tracy, Winslow, Kingsland and Baldwin have all refused to approve/deny ceremonial items used in the practice of Wicca and have confiscated and destroyed the ceremonial items which plaintiff has made to practice his faith which were of no threat to the safe or orderly operation of the prison. (4) Even though per A.D.O.C. policies a lighter is approved for Wicca for use in lighting herbs etc. in the process of purification-smudging ceremonies and kept by security staff, Defendant Linderman overrode the policy in denying all Pagan religious use of such lighter thus denying plaintiff necessary means to exercise very sacred ceremonies as part of his religion. This is all after years of the wiccans being able to use lighter, all without a single incident of misconduct or concern. (5) Though requested, Defendants Winslow, Tracy, Linderman, Schriro, Ryan, Fizer, Paloszari, Schweitzer, Thompson, Aguilar, Gordon have refused adequate private areas to hold sacred religious ceremonies, adequate feeding arrangements on special religious holidays as have been given to Muslim, Jewish, Native American religions. (6) Defendants Schriro, Ryan, Linderman, Lyons, Lebo (Continued). on page 5-B

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

Plaintiff has been subjected to oppression and denial of his religious practices which is intentional, discriminatory, unequal and systemic within the A.D.O.C. system.

5. **Administrative Remedies.**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- Did you submit a request for administrative relief on Count III?  Yes  No
- Did you appeal your request for relief on Count III to the highest level?  Yes  No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

have disallowed and excluded/confiscated publications and items (catalogs, books, essential oils) that were previously allowed, all to vindictively oppress plaintiff in the exercise of his religion (7) On November 8, 2006 Defendants Beverly and Michaels confiscated all of plaintiff's sacred religious items and books depriving plaintiff the ability to practice his religion. (8) On November 15, 2006, Defendants Beverly, Kokemor, Helms, in plaintiff's presence, desecrated, destroyed, damaged and disposed of sacred religious items and books they had taken and kept all other religious materials from plaintiff for a year. (9) Defendants Schirra, Ryan, Linderman, Fizer, Schweitzer, Paloszari, and Thompson were all informed of either Defendants unconstitutional acts, which continue to this date, but do nothing to correct their subordinates actions (10) Defendants Baldwin and Helms have given plaintiff charge of religious preference to change their religions to "make things easier for them".

**COUNT IV**

1. State the constitutional or other federal civil right that was violated: Retaliation for exercise of protected Conduct 1<sup>st</sup>, 8<sup>th</sup>, 14<sup>th</sup> Amendments

2. Count II. Identify the issue involved. Check only one. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input checked="" type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	

3. Supporting Facts. State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

(1) While housed at Lewis-Bart between July and November 2005 filed many grievances/complaints to Defendant Daughtry pertaining to allowable property, denial of medical and Dental Care. (2) After not answering plaintiff's grievances per Department Order 802, plaintiff filed complaints to his Supervisor, being Defendants Bartos, Ramos, Meya. (3) In retaliation for this, Defendant Daughtry fabricated reasons and placed plaintiff on "Grievance Abuse Status" to cover his misconduct and dispose of every grievance plaintiff had filed. (4) Defendants Bartos, Ramos and Meya approved Defendant Daughtry's placement of plaintiff on "Grievance Abuse Status" to attempt to stop plaintiff's right to access to Courts. (5) While at Tucson-Santa Rita from November 2005 through December 2005, the "Grievance Abuse Status" was adopted by prison officials to keep from processing plaintiff's grievances. (6) After filing 51983 lawsuit in September 2006 used the "Failure to Exhaust" defense to obtain dismissal of valid constitutional claims. (See Brinkman v. Schriro et al., CV06-512-TUC-CKJ). (7) From November 2005 through December 2005, plaintiff was subject to disciplinary action for filing grievances against staff for misconduct which resulted caused plaintiff to suffer loss of good time credits from plaintiff's home sentencing state of Kansas. These unconstitutional actions were perpetrated by Defendants Dean, Gorkowski, Kokemor, Helms, Beverly. This also led to the earlier described confiscation, destruction of religious materials. (8) Defendant Linderman then retaliated by banning the once authorized essential oils. (9) Defendants Lyons, Helms, Linderman and Lebo then banned religious materials from the previously approved catalog outlet "Azure Green" which deprived plaintiff the ability to order religious items and materials while returned to Lewis-Bart Unit from January to November 2008. (Continued on page 6-B).

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

Plaintiff has suffered retaliatory practices by Defendants for filing grievances in response to Defendants unconstitutional acts of inadequate medical, dental and for plaintiff's religious practice.

5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- b. Did you submit a request for administrative relief on Count II?  Yes  No
- c. Did you appeal your request for relief on Count II to the highest level?  Yes  No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

Plaintiff was placed on "Grievance Abuse Status By Defendants Bash, Bruekner, Thompson  
for grievance filed for lack of medical-Dental treatment, lack of clothing and bedding.<sup>⑩</sup> Defendant  
Cruz wrote plaintiff write-up for filing grievance on the assault perpetrated on plaintiff  
by Defendant Brandon.<sup>⑪</sup> Defendants Schiro, Ryan, have known of plaintiffs problems but  
refuse to take corrective action on their subordinates.

## D. CAUSE OF ACTION

### COUNT 2

1. State the constitutional or other federal civil right that was violated: Assault by staff - 8<sup>th</sup> and 14<sup>th</sup> Amendment

2. Count I. Identify the issue involved. Check only one. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input checked="" type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	

3. Supporting Facts. State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

(1) On July 21, 2008, while housed at Lewis-Rast Unit plaintiff was subjected to an assault by staff by Defendant Brandon. (2) This assault took place at about 2:00 pm in building one - C/D pod control room. (3) Assault was in response to plaintiff's inquiry as to officers name and badge number to be used in a complaint to supervisor. (4) While at the communication spot for control officer and inmate, Defendant Brandon kicked a heavy steel trap door closed on plaintiff's ear causing great pain and permanent injury to plaintiff from the loud percussion of the trap slamming. (5) Defendant Brandon then grabbed her personal belongings and left control room for shift change. (6) Plaintiff went to pod door and banged for help but was ignored. (7) Defendants Cruz and Jackson then came and cuffed plaintiff from behind disregarding plaintiff's medical order for front cuff only and escorted plaintiff to isolation cell. (8) Although plaintiff submitted Health Needs Request for pain from injuries suffered, he was not seen until July 30, 2008. (9) In the following days plaintiff inquired as to Defendant Brandon name from Defendants Holmes, Pegg, Apodaca, Berger, Key and Bruegger but none would divulge name or badge number. (10) Plaintiff's injuries were eventually diagnosed as "barometric trauma" for which he still suffers.

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).  
The Assault and excessive force by prison staff caused painful and permanent, irreparable injury, pain and suffering

5. Administrative Remedies:

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- b. Did you submit a request for administrative relief on Count I?  Yes  No
- c. Did you appeal your request for relief on Count I to the highest level?  Yes  No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_

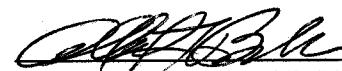
**E. REQUEST FOR RELIEF**

State the relief you are seeking:

- ① Declaratory relief and injunctive relief in the form of Court orders to Defendants.
- ② Compensatory Damages in an amount deemed just by the Court.
- ③ Punitive Damages in an amount to ensure Defendants don't repeat these actions.
- ④ Costs and Fees associated with the prosecution of this case
- ⑤ Any additional relief this court deems just.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 09/02/09  
DATE

  
\_\_\_\_\_  
SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attorney's address & telephone number)

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.